

UNANIMOUS CONSENT REQUEST—
EXECUTIVE CALENDAR

Mr. McCONNELL. Again, I remind my colleagues that we confirmed 19 judges this year. We will have 21 judges confirmed by the end of this week.

Therefore, bearing that in mind, I ask unanimous consent that the cloture motion filed on Calendar No. 95 be vitiated and the Senate proceed to the consideration of this nomination at a time on Tuesday, June 4, to be determined by the majority leader after consultation with the Republican leader; further, I ask that there be 1 hour of debate on the nomination equally divided in the usual form; that at the expiration or yielding back of that time, the Senate proceed to vote on the confirmation of the nomination with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

The majority leader.

Mr. REID. Mr. President, this good man, Sri Srinivasan, was first nominated in June of 2012. He is a brilliant man. He is an honors graduate from Stanford Law School.

Justice Roberts left that court in 2005. We have been trying to fill spots on that court for all of these many years—6 or 7 years. The DC Circuit is the court that some say is more important than the Supreme Court. No judge has been confirmed in the DC Circuit since 2006. It is an 11-member court established by law, so to have a 7-member court is unfair.

We have had one woman, for example, Caitlin Halligan, a highly qualified nominee, who has been filibustered twice by the Republicans. She was nominated to fill the seat of Justice Roberts.

The man we are talking about today has been nominated to a seat that has been vacant for 5 years. The four seats were vacated in 2005, 2008 and have senior status by two other judges in the last year or two. His nomination has pending for 345 days. That is by far the longest wait of any of the judicial nominations currently awaiting confirmation by the full Senate.

My friend the Republican leader talks about Bush's second term and how he didn't get many nominations. He didn't get many nominations at that time because we approved so many in the first term. It is just the opposite with President Obama. Eighteen Bush circuit court nominees were confirmed within 7 days or less after being reported by the committee.

A Republican-controlled Senate filed cloture on three circuit court judges—including some real controversial ones, such as, William Pryor and Janice Rogers Brown. Cloture was filed in less than 1 week.

There has been a stall going on in the Senate for years. It doesn't take a mathematician to figure it out. We are being held up on nominations and legislation.

President Obama has been trying to have the people he wants as part of his team for 4½ years. There are multiple vacancies in this court. It has been reported out unanimously by the committee.

There is all of this stalling and waiting so that maybe they will be able to render another couple of opinions over the next couple weeks and thwart the law which says there should be 11 people on the court. But to pack the court with what has been determined the number of people who should be on that court? Is it right to have a total of six members of the Circuit Court? Is it packing the court because we want to fill the court as it is called for in the Constitution? No. We should vote on the nomination of this young man today so he can go to work and help fill one of the four vacancies that has been long standing in that court for 5 or 6 or 7 years.

Unless there is an agreement, we will have a cloture vote at the end of tomorrow, and if they want to use their 30 hours, which they are entitled to do under the arrangement we made at the beginning of this year, they can use the 30 hours. But we are going to get this young man confirmed. It is the right thing to do and we are going to get him confirmed as soon as possible. Having waited 345 days, I think he deserves it.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. Mr. President, the first time this nominee, who was reported out of committee unanimously, appeared on the Executive Calendar was 2 days ago. President Obama waited years before making any nominations to the DC Circuit. Then he made just one—Caitlin Halligan—and this is his second nominee to that court.

More broadly, the issue is, How has the Senate been treating President Obama? We have confirmed a total of 190 Obama judicial nominations. We have defeated two. That is 190 to 2. There are 70 percent of the Federal judicial seats without any nominees—70 percent of the vacancies without any nominees.

Look, this is a manufactured crisis. The core point here, I would say to my friend the majority leader: We have a good relationship. We work together every day. But the majority leader gave his word to the Senate that we would determine what the rules are for this Congress. A number of my Members felt it was settled. We voted for resolutions and some rules changes at the beginning of the year based upon the majority leader's word. It is important for his word to mean something, not just to his Members but to ours.

Statistically, it is not true. The math can't be denied. It is simply not true that we have been mistreating the President in any way with regard to the confirmation process. With regard to the way the Senate itself is working, the majority leader has been actually quite complimentary, and I give him credit for helping us to get back to nor-

mal here, to have a regular process on bills. WRDA is a good example of where we were calling up amendments. Many of them we are getting on without even a motion to proceed, based upon the majority leader's representation we are going to have votes and, by golly, we have been having votes and, amazingly enough, Senators like that. They are not marginalized by a process under which they don't get to participate. So I think we have made an enormous amount of progress. I wish to make sure the majority leader intends to keep his word, so we can continue to have the kind of collegial, constructive atmosphere we have had this year in the Senate throughout the balance of this Congress.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. We have to work together here, but it is mutual work, it is not all on one side. It is not my word versus somebody else's word.

In 2005, we had a knockdown, drag-out battle here. My friend the Republican leader, along with others, gave speeches on the Senate floor that the process regarding judges wasn't moving along quickly enough. As a result of that crisis, in an effort to resolve the matter, we agreed to put some people on the bench we have regretted since then, including Janice Rogers Brown, Thomas Griffith, and Brett Kavanaugh, but we agreed to that and they are on the court now. We need a balance.

My friend has focused on judicial nominations. We have been doing better there. But other nominations, not so. We can talk about all the rights of the minority and all that. The President of the United States, whether it is George Bush or President Obama or Jeb Bush or Hillary Clinton, whoever it might be, deserves the right to have the people they want to work there and not be held up for months and months to fill some of these minor posts. I could run through a list of names that were held up and have been held up for a long time.

My friend the Republican leader said during the squabble we had previously how he agreed with the fact we should change the rules. I am not saying we are going to change the rules, but I am saying we have to do a better job than what is going on around here. This is no threat. We need to look at the facts. Look at the facts.

We are going to continue working to try to work through this morass we have here. But let's not focus only on the judiciary. We have a lot of problems with regular nominations. We haven't talked about legislation. We are doing a little better on that, but a perfect example of that is what is going on with the budget. People begged around here, yelled and screamed and fought, for regular order. They get it and then they don't want it.

I am convinced we need to move forward. I think one of the things we should do with something that has been reported out of the committee 18

to nothing, and there have been vacancies for 6 or 7 years, is we should do that immediately, not wait for a couple of weeks to do it. If somebody cares about this good man, his record is available. They can read it in 10 minutes.

I am sorry I had to object to my friend's unanimous consent request, but it was easy to do because the request is simply wrong.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. McCONNELL. Mr. President, let me thank my friend the majority leader for confirming that he intends to keep his word.

With regard to judicial nominations, the facts are not irrelevant. Of the 33 nominations in the Senate we have acted on this year—this calendar year—cloture has been required on three: Brennan, Hagel, and Halligan, and cloture was not invoked on only one. We have confirmed 33 boards—actually judges, agencies—33 nominations confirmed this year. Cloture was required on only three, and cloture was not invoked on only one.

My only point to my friend the majority leader is, the math is hard to dispute. We have made a major effort here to move the Senate back in the direction that I know the majority leader and I agree on, the way the Senate ought to operate. We have made major progress. I think that progress needs to be recognized. My friend the majority leader said it on various occasions this year in connection with bills we have processed in a fair and open way with plenty of amendments and an opportunity for everybody to be involved. So let's tone down the rhetoric.

I want to say again I appreciate the majority leader's commitment to keep his word. It is important around here. It has a lot to do with how we go forward. I think the conversation this morning has been constructive, and I thank him. I am sorry he feels we can't wait 10 days to do this nominee, particularly since there are circuit judges, I believe, and maybe district judges as well, already on the calendar. The way we have been trying to do it around here that I thought the majority leader agreed with is we would take them up in the order they came out and appeared on the calendar. I know, for example, there is a judge from Wyoming that Senators from Wyoming in my party are for, and they are asking me why this particular nominee was jumped over, over their nominee, because we have been sequencing these, I believe, have we not, as they come out.

So here we have a nominee we all agree on for a court that is not overloaded with work—a nomination only recently made and recently confirmed—and the only dispute here seems to be over whether we do it this week or a week from now. Thus, my friend, that is why I call this a manufactured crisis. There is no crisis here. We are not arguing over this nominee. We like him. So the majority leader

can make us have a cloture vote this week and we can skip over the judges who have been waiting who came out of committee and are on the calendar if he so chooses; there are some advantages to being the majority leader. But goodness gracious, we have enough arguments here over things we disagree on, and it sounds to me as though we are having an argument over something we agree on.

So I hope we can tone down the rhetoric and continue the good way we have been operating this year. We have big, controversial issues coming our way. Let's don't make being a Senator and functioning in the Senate any more difficult than it is anyway, because we have big differences about the future of the country. But let's have those debates in a collegial way and not manufacture crises that don't exist.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, everyone knows that numbers—we can show anything we want with numbers. The fact is there has been slow-walking done on the President's nominations, and we can look at how they do that. It has been interesting. It is a new way of doing things around here. A nominee comes up and what the committee does is submit hundreds and hundreds of questions. One of our nominees got 1,000 questions in writing the person had to respond to. That has never happened before. We have all of these ways of stalling.

I know the Senators from Wyoming want to vote on and have spoken to me about Gregory Alan Phillips to be a circuit court judge for the 10th Circuit. Let's do it right now. Let's do him today. The Wyoming Senators shouldn't have to wait.

That is why I ask unanimous consent that we do—I am sorry. I like him, but the man on whom we are going to invoke cloture graduated law school with my son. He is a fine man, but I am not the only one who messes up his name. He was a basketball player in Kansas. He said his parents came to all of his games and they cringed every time his name was pronounced because it is a hard name to pronounce.

I ask unanimous consent that at a time to be determined by me, the Senate proceed to executive session to consider Calendar No. 95, Srikanth Srinivasan; that there be 1 hour of debate equally divided in the usual form; that upon the use or yielding back of that time the Senate proceed to vote without intervening action or debate on the nomination; the motion to reconsider be considered made and laid upon the table, with no intervening action or debate; that no further motions be in order to the nomination; that any statements related to the nomination be printed in the RECORD; and that President Obama be immediately notified of the Senate's action and the Senate then resume legislative session.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. McCONNELL. Mr. President, reserving the right to object, again, I think what we are witnessing here is a manufactured crisis. We are doing four judges this week—this very week—four judges. There are five others on the calendar before the nominee the majority leader has been trying to get us to process this week. I think it is a better policy to continue to set votes that the facts show are in a timely way.

Why are we doing this? We are not having a problem confirming judges. I don't understand. Why are we doing this? It doesn't make any sense. We have big issues coming our way on immigration, for example, that are going to be very controversial. Members on both sides have been making every effort to tone down the rhetoric, to get us in the proper place to deal with a very difficult and contentious piece of legislation.

Why are we doing this? What is the point? All of these judges are going to be approved in a relatively short period of time in an orderly process we have been working on all year that has produced four times as many judicial confirmations for President Obama in his second term as President Bush had at this point in his first term when we had a Republican Senate.

This is an unprecedented, rapid pace for confirmations. So I would say to my friend, why are we doing this? I am going to object, but I would like to know what the point is. What is the problem?

Mr. REID. Mr. President, I will be happy to respond to what the problem is.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Senator LEAHY said yesterday:

A recent report by the nonpartisan Congressional Research Service compares the whole of President Obama's first term to the whole of President Bush's first term, and the contrast could not be more clear. The median Senate floor wait time for President Obama's district [court] nominees was 5 times longer than for President Bush's. President Obama's circuit [court] nominees faced even longer delays, and their median wait time was 7.3 times longer than for President Bush's circuit nominees. The comparison is even worse if we look just at nominees who were reported and confirmed unanimously. President Bush's unanimously confirmed circuit nominees had a median wait time of just 14 days. Compare that to the 130.5 days for President Obama's unanimous nominees.

So 14 days compared to 130.5. Things are going along really well? I do not think so.

On with what Senator LEAHY said:

That is more than 9 times longer. Even the nonpartisan CRS calls this a "notable change." There is no good reason for such unprecedented delays, but those are the facts.

So that is why we are doing this. There is no reason to wait 10 days or 2 weeks for this good man to fill a seat on a court that has been waiting for people to get on the court for 7 years. We have a majority in that court that

is wreaking havoc with the country. For the first time in 230 years, they rule the President cannot make a recess appointment. So, yes, there is a crisis, and we need to do something about it. One way to resolve part of it is to get this good man on the court now.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Mr. President, I gather, listening to the majority leader, the whole purpose is to stack the court. So the real issue, I guess, is he disagrees with the rulings on the DC Circuit.

Look, we have been voting to confirm judges we know we will not prefer the outcome of their decisions. But it sounds to me like the majority leader has finally kind of fessed up to what the real problem is. The reason it needs to be done this week versus next week is because he does not like what the DC Circuit is doing. So it does not have anything to do with caseload or anything else. In fact, what is unprecedented is confirming a DC Circuit court judge 2 days after he has been on the calendar—2 days. Goodness. What is the difference between now and next week? I find it impossible to understand.

In fact, I do not understand why we are having this whole discussion this morning. We have plenty of things to debate around here and plenty of things we disagree upon. We have had an orderly process. This Congress has done well: 19 judges compared to 4 for President Bush at this point.

If there is still a consent request pending, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. MCCONNELL. I think the majority leader and I ought to sit down like we normally do and figure this out and eliminate a manufactured crisis and go forward.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, in school we studied a lot of things. But one of the things I cannot forget is George Orwell's "1984." It was an interesting book because in that book he talked about people coming to a time when whatever they said was factually just the opposite.

Here is where we are now. It has been legislatively determined the DC Circuit should have 11 members. My friend says we are stacking the court? There are four vacancies. Stacking the court by having eight there instead of seven? That math is not very good.

My friend also keeps talking about that the DC Circuit does not have anything to do. The DC Circuit is now more than one-third vacant with four judicial vacancies. Mr. Srinivasan is nominated to the eighth seat on the DC Circuit. Three still remain empty.

And, yes, we are. The country is concerned about the decisions coming out of that court. The DC Circuit Court of Appeals is considered by some the most

important court in the land. But by virtually everybody, it is "the second most important court in the land" because of the complex nature of the cases they handle. The court reviews complicated decisions and rulemaking of many Federal agencies and in recent years has handled some of the most important terrorism and enemy combatant and detention cases since the attacks of September 11. These cases are very complex in nature, requiring additional time for consideration.

Congress took action to address these concerns about their caseload by decreasing the number of judgeships in 2008 from 12 to 11. Congress has set the number of judgeships needed by the court at 11. The court should not be understaffed by one-third.

In reality, according to the Administrative Office of U.S. Courts, the caseload per active judge has increased by 50 percent since 2005, when the Senate confirmed President Bush's nominee to fill the 11th seat on the DC Circuit.

So Senate Republicans willingly confirmed President Bush's nominees to the 9th, 10th, and 11th seats on the DC Circuit. We did not think they were stacking it. I did not particularly like some of the people they put on there, but it was not stacking it. That is what the legislation called for.

This good man is President Obama's second nominee to the DC Circuit to fill the eighth seat, and they filibustered Halligan twice.

So this is a situation that needs to be resolved quickly. We cannot have the second, or first, most important court in the land one-third vacant. We are stacking the court with one person? I think not.

So we can stay here longer, but I have made my point. One thing I have to say to my friend, although we have gotten into a few of these little conversations before on the Senate floor, I will wind up getting the last word.

The ACTING PRESIDENT pro tempore. The Republican leader.

Mr. MCCONNELL. Yes, I know the majority leader will always have the last word. That is the advantage of being in the majority and not the minority. I think it has been actually a good discussion this morning. I think we have demonstrated there is no real problem. We have confirmed the President's nominees both for the judiciary and for the executive branch in a very timely fashion, and we will continue to process these judges in consultation with the majority leader as they come along.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, the only thing I would say is, what about the judge from Wyoming? Why don't we do that today? Could there be a more Republican State in the country than Wyoming? Maybe. I do not know. Maybe Idaho is vying for No. 1. But I am willing to approve this judge today. Why don't we vote on him today?

Well, if you want to go ahead and have us invoke cloture on this other

guy, we will do that, but I am willing to vote on the Wyoming guy today.

Mr. MCCONNELL. Since the majority leader always reminds me he has the last word, I am hesitant to speak again. But we will continue to process these judges in an orderly fashion, as we have all year long, and, hopefully, he and I can discuss this further off the floor and find a way forward.

Mr. REID. I do not want anyone thinking I am not keeping my word. I was not going to say anything, but I thought I said I would get the last word.

So Senator MCCONNELL can say something now, and I will not get the last word.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will be in a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the Republicans controlling the first half.

The Senator from Arkansas.

IRS SCANDAL

Mr. BOOZMAN. Mr. President, I am very much appreciative of the Senator from Kentucky and the Senator from Nevada having this very important discussion.

Washington tends to operate inside a bubble where one can easily forget just how much Main Street America is hurting economically, how many Americans feel their rights are being threatened, and how many fear we are not going to leave behind a better country for our children.

That is why it is so important we stay connected to our constituents. It is why I travel home almost every weekend, hold telephone and online townhalls from my Washington office, and try to read my mail, which is so very important.

In a recent townhall I answered some difficult questions on the issues we are facing as a nation. However, one of the toughest questions that was posed was not about a specific policy issue. Instead, it was when I was asked: How do we fix the mess in Washington?

I answered, in part, that transparency and accountability would go a long way to restoring faith in Washington. That was before the Benghazi controversy escalated. Then news of the IRS scandal broke. Almost immediately after that we learned the Department of Justice had obtained the private phone records of dozens of Associated Press reporters.

This is the opposite of what we need to do to fix the problems in Washington. These scandals move us in the wrong direction.